

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN ARMSTRONG, et al.,
Plaintiffs,
v.
EDMUND G. BROWN, Jr., et al.,
Defendants.

No. C 94-2307 CW
ORDER GRANTING
PLAINTIFFS' MOTION
TO COMPEL
COMPENSATION AT
THEIR COUNSEL'S
REASONABLE 2010
HOURLY RATES
(Docket No. 1745)

Plaintiffs John Armstrong, et al., and Defendants Edmund G. Brown, Jr., et al., dispute the hourly rates at which Plaintiffs' counsel should be compensated for work completed in 2010. Plaintiffs move to compel compensation at hourly rates they assert to be reasonable. Defendants oppose the motion. The motion was decided on the papers. Having considered the papers submitted by the parties, the Court GRANTS Plaintiffs' motion.

BACKGROUND

On September 20, 1996, the Court entered a remedial order and injunction that required Defendants to develop plans to ensure that their facilities and programs complied with the Americans With Disabilities Act (ADA), 42 U.S.C. §§ 12131, et seq. That order and injunction provided that Plaintiffs were the prevailing party in this action and were entitled to fees, litigation expenses and costs as authorized by law to ensure compliance with the September 1996 remedial order and injunction and any subsequent remedial orders. On March 26, 1997, pursuant to the parties' stipulation, the Court entered an order governing the collection of attorneys'

1 fees and any disputes over fees.

2 In 2009, the parties agreed that Plaintiffs' attorneys,
3 paralegals and other legal staff (collectively, Plaintiffs'
4 counsel) would be compensated at their 2008 hourly rates for work
5 completed in 2009. After the end of the first quarter of 2010, the
6 parties were not able to agree on the hourly rates for work
7 completed in 2010. Plaintiffs sought increases in the hourly rates
8 from their 2008 levels, which Defendants rejected. Mediation of
9 the dispute was unsuccessful.

10 Despite the parties' impasse, Plaintiffs' counsel continue to
11 be compensated for their work, albeit at 2008 rates. Plaintiffs
12 indicate that, for the first quarter of 2010, the current dispute
13 has resulted in their counsel being paid \$110,070 less than what
14 they should have been paid under the requested hourly rates that
15 Plaintiffs assert to be reasonable for 2010. Bien Decl. ¶ 103.

16 DISCUSSION

17 The parties' dispute focuses solely on the reasonableness of
18 hourly rates for work completed during 2010. Defendants do not
19 contend that the hourly rates sought by Plaintiffs are
20 unreasonable. Instead, Defendants assert that the requested hourly
21 rates reflect unreasonable increases over the 2008 rates.

22 Under the ADA, prevailing parties may recover reasonable
23 attorneys' fees. 42 U.S.C. § 12205. In determining whether an
24 hourly rate is reasonable, a court must look "to 'the prevailing
25 market rates in the relevant community.'" Perdue v. Kenny A, 130
26 S. Ct. 1662, 1672 (2010) (quoting Blum v. Stenson, 465 U.S. 886,
27 895 (1984)). Several factors may be considered, "including the
28 novelty and difficulty of the issues, the skill required to try the

1 case, whether or not the fee is contingent, the experience held by
2 counsel and fee awards in similar cases." Moreno v. City of
3 Sacramento, 534 F.3d 1106, 1114 (9th Cir. 2008).

4 The party seeking an award of attorneys' fees bears the burden
5 of establishing the reasonableness of the hourly rates requested.
6 Camacho v. Bridgeport Fin., Inc., 523 F.3d 973, 980 (9th Cir.
7 2008). To demonstrate reasonableness, that party may rely on the
8 affidavits of counsel "and other attorneys regarding prevailing
9 fees in the community, and rate determinations in other cases,
10 particularly those setting a rate for the [party's] attorney." Id.
11 at 980 (citation and editing and internal quotation marks omitted).
12 "The party opposing the fee application has a burden of rebuttal
13 that requires submission of evidence to the district court
14 challenging the accuracy and reasonableness of the . . . facts
15 asserted by the prevailing party in its submitted affidavits." Id.
16 (citation and internal quotation marks omitted).

17 For partner-level attorneys at the Rosen Bien & Galvan, LLP
18 law firm, Plaintiffs seek hourly rates that range from \$560 for a
19 1997 law school graduate to \$800 for a 1962 law school graduate.¹

21 ¹ Plaintiffs submit the rate sheets of the law firms and legal
22 organizations that serve as Plaintiffs' counsel. Bien Decl., Exs.
23 22-23. The rate sheets appear to list all timekeepers at each law
24 firm or legal organization, irrespective of whether the timekeeper
25 worked on this case. The Court determines only the reasonableness
26 of rates of timekeepers who apparently worked on this case and for
27 whom there is evidence of reasonableness. See, e.g., Bien Decl. ¶¶
28 55-75 (timekeepers at Rosen Bien and Galvan law firm), ¶¶ 76-82
(timekeepers at Prison Law Office), ¶¶ 83-89 (timekeepers at
Bingham McCutchen law firm), ¶ 91 (attorney at Disability Rights
and Education Defense Fund); Wolinsky Decl. ¶ 24 (discussing
Sanford Jay Rosen, named partner at Rosen Bien law firm); Norman
Decl. ¶ 30 (listing timekeepers who worked on this case in 2010);
Holtz Decl., Exs. A-C (timekeepers at Bingham McCutchen law firm).

(continued...)

1 Hourly rates for associates range from \$285 for a 2009 law school
2 graduate to \$510 for a 1993 law school graduate. Paralegal hourly
3 rates range from \$200 to \$240. Hourly rates for litigation support
4 staff and paralegal clerks range from \$150 to \$185.

5 For attorneys at the Prison Law Office, Plaintiffs seek hourly
6 rates that range from \$275 for a 2009 law school graduate to \$700
7 for a 1978 law school graduate. The hourly rate for the firm's law
8 clerks, including law students and other litigation assistants, is
9 \$180. Plaintiffs seek an hourly rate of \$170 for the office
10 manager, who "is responsible for overseeing all operations in the
11 office." Norman Decl. ¶ 27.

12 For attorneys at the Bingham McCutchen law firm, Plaintiffs
13 seek hourly rates of \$400 for an associate who graduated in 2008,
14 \$480 for an associate who graduated in 2006, and \$655 for a partner
15 who graduated in 1997.

16 For an attorney who works at the Disability Rights Education &
17 Defense Fund, Inc. (DREDF) and graduated in 1988, Plaintiffs seek
18 an hourly rate of \$565.

19 Plaintiffs offer sufficient evidence to support the
20 reasonableness of their counsel's hourly rates. As noted above,
21 Defendants do not dispute that the requested hourly rates are
22 within the range for prevailing market rates in the San Francisco
23 Bay Area. Nor do Defendants dispute the nature of the work
24 entailed in this action or the experience and reputation of
25 Plaintiffs' counsel.

26
27 ¹(...continued)
28 Tables summarizing the rates found to be reasonable by the Court
are contained in Appendix A of this Order.

Defendants' sole objection -- to the increases in the hourly rates over 2008 levels -- is not well-taken. Defendants agree that hourly rates in the Bay Area have risen between 2008 and 2010, representing that hourly rates have increased, on average, by approximately 5.2 percent. However, this figure reflects only the across-the-board rise in firms' overall rates, not the increase in individual attorneys' hourly rates for the additional experience the individuals accrued over the two-year period. Private-sector firms often charge higher hourly rates for attorneys with more experience. See, e.g., Pearl Decl. at 4-8; Supp. Holtz Decl. ¶¶ 4-5. Compensation rules for state employees also reflect this principle, providing annual experience-based pay increases. See, e.g., Cal. Code Regs. tit. 2, § 599.683 (providing for annual "merit salary adjustment," so long as the relevant authority certifies "that the employee has met the standards of efficiency required for the position"). Plaintiffs offer evidence that the differences between the requested 2010 hourly rates and the 2008 hourly rates are reasonable, in light of the incremental rise in hourly rates in the Bay Area and each timekeeper's professional experience. Defendants offer no evidence to show that the experience-related increases in the timekeepers' hourly rates are unreasonable.

The cases on which Defendants rely do not require a contrary conclusion. Defendants cite this Court's decision in Citizens for Better Forestry v. U.S. Department of Agriculture, 2010 WL 3222183 (N.D. Cal.), to argue that year-over-year increases must be limited. However, Citizens concerned a fee request under the Equal Access to Justice Act (EAJA), which contains an explicit provision

1 limiting hourly rates to \$125 per hour unless "an increase in the
2 cost of living or a special factor, such as the limited
3 availability of qualified attorneys for the proceedings involved,
4 justifies a higher fee." 28 U.S.C. § 2412(d)(2)(A). Plaintiffs
5 here do not seek fees pursuant to the EAJA. Further, in that case,
6 the defendants contested the reasonableness of the hourly rates
7 sought by the plaintiffs, and the plaintiffs did not substantiate
8 the differences sought in the hourly rates for 2008 and 2009.
9 Here, Defendants do not challenge the reasonableness of the hourly
10 rates for work completed in 2010, and Plaintiffs have supported
11 their requested increases.

12 Defendants do not dispute that the requested hourly rates fall
13 within the range of prevailing market rates in the Bay Area, and
14 their objection regarding the rate increases is not well-taken.
15 Accordingly, Plaintiffs' counsel shall be compensated at the rates
16 they requested for work completed in 2010.

17 CONCLUSION

18 For the foregoing reasons, the Court GRANTS Plaintiffs' motion
19 to compel compensation at their counsel's reasonable 2010 hourly
20 rates. (Docket No. 1745.) Defendants shall pay the disputed
21 amounts forthwith, with interest paid thereon, as provided under 28
22 U.S.C. § 1961. See Spain v. Mountanos, 690 F.2d 742, 747-48 (9th
23 Cir. 1982) (concluding that interest may be allowed on attorneys'
24 fee awards in civil rights cases).

25 IT IS SO ORDERED.

26
27 Dated: August 8, 2011

28 

CLAUDIA WILKEN
United States District Judge

APPENDIX A - RATES REQUESTED FOR WORK COMPLETED IN 2010

Rosen Bien Galvan, LLP

<u>Timekeeper (grad. yr., if applicable)</u>	<u>Position</u>	<u>Rate</u>
Sanford Jay Rosen (1962)	partner	\$800
Michael W. Bien (1980)	partner	\$700
Gay C. Grunfeld (1984)	partner	\$575
Ernest Galvan (1997)	partner	\$560
Thomas Nolan (1993)	associate	\$510
Holly M. Baldwin (1997)	associate	\$490
Amy Whelan (2001)	associate	\$430
Maria Morris (2001)	associate	\$430
Shirley Huey (2002)	associate	\$415
Kenneth Walczak (2003)	associate	\$390
Lisa Ells (2005)	associate	\$360
Mark Feeser (2007)	associate	\$325
Blake Thompson (2007)	associate	\$325
Sumana Cooppan (2009)	associate	\$285
Anita Nabha (2009)	associate	\$285
Karen Stilber	paralegal	\$240
Sofia Millham	paralegal	\$225
Haruka Roudebush	paralegal	\$200
Matthew Harrison	paralegal	\$200
Claire Hoffman	paralegal	\$200
Marc Shinn-Krantz	litig. supp.	\$185
Hugo Cabrera	litig. supp.	\$185
Misha Goodwin	litig. supp.	\$150

Prison Law Office

<u>Timekeeper (grad. yr., if applicable)</u>	<u>Position</u>	<u>Rate</u>
Donald Specter (1978)	attorney	\$700
Judy Rosenberg (1979)	attorney	\$650
Sue Christian (1985)	attorney	\$550
Millard Murphy (1986)	attorney	\$510
Sara Norman (1995)	attorney	\$530
Rebekah Evenson (1999)	attorney	\$470
Penny Godbold (2003)	attorney	\$390
Megan Hagler (2003)	attorney	\$390
Rana Anabtawi (2009)	attorney	\$275
Students / Litigation Assistants	law clerks	\$180
Edie DeGraff	staff	\$170

Bingham McCutchen

<u>Timekeeper (grad. yr., if applicable)</u>	<u>Position</u>	<u>Rate</u>
Geoffrey T. Holtz (1997)	partner	\$655
Tracey D. Berger (2006)	associate	\$480
Frank Busch (2008)	associate	\$400

Disability Rights Education and Defense Fund

<u>Timekeeper (grad. yr., if applicable)</u>	<u>Position</u>	<u>Rate</u>
Linda D. Kilb (1988)	attorney	\$565